

Fair Value for MBO Shareholders

Resource type: [Legal update](#): [archive](#)

Status: **Published on 15-Dec-2009**

Jurisdiction: **Japan**

This article is part of the PLC Global Finance November e-mail update for Japan.

Atsumi & Partners

Speedread

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The new Companies Act allows more flexible corporate restructurings and since it became effective in 2006, some listed companies have carried out MBOs and squeezed-out minority shareholders at a price set by the company and which was favourable to the company. In some such cases, some minority shareholders objected to the MBO plan prepared by the company and the proposed price, and brought the issue to the courts.

The Tokyo High Court, the Osaka High Court and the Supreme Court of Japan have held that a company planning an MBO should set the share buyout price "fairly" and that the procedure for the MBO should be transparent to all shareholders. The Osaka High Court recently criticised a company that set the offered price at the market price on the date they announced the MBO, having driven its share price lower than during the 12 months before the announcement of the MBO.

In addition, the courts have held that in setting the offer price a listed company should add to the market price of the shares a control premium (the value that the management should pay to shareholders to obtain power to manage the company without the shareholders) and a squeeze-out premium (compensation for loss of investment opportunity for shareholders who sell shares to the management); and the courts suggested that the aggregate value of the control and squeeze premiums be 20% of the market price.

These cases demonstrate the continuing trend of increased shareholder activism in Japan and the greater willingness of the courts to intervene to ensure fairness.

Resource information

Resource ID: 5-501-0553

Published: 15-Dec-2009

Products: PLC Cross-border, PLC Global Finance, PLC US Law Department

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